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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,608	10/30/2003	Stephen Roy Barrow	J6816(C)	9632
201 7590 03/08/2007 UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100			EXAMINER RAMACHANDRAN, UMAMAHESWARI	
			ART UNIT	PAPER NUMBER
			1617	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/08/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/697,608	<b>Applicant(s)</b> BARROW ET AL.	
	<b>Examiner</b> Umamaheswari Ramachandran	<b>Art Unit</b> 1617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 6-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 6-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

The examiner notes the receipt of the amendments and remarks received in the office on 1/9/2007. Claim 1 has been amended, 3-5 have been canceled and claims 10-15 have been added. Claims 1, 2, 6-15 are pending.

The amendment of claim 1 and the addition of new claims (10-15) necessitated the following rejection.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 6-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mausner et al (U.S. 5,215,759) in view of Muller et al (U.S. 6,248,338) and further in view of Franklin et al. (U.S. 2001/0055574).

Mausner et al. teaches a cosmetic composition comprising glycerin (20-40% of 0.5% to about 3% of hydrophilic microcapsule), PEG-100 stearate (40-60% of 11.5-15.5% of a complex of glyceryl stearate), octyldodecanol, a fatty alcohol (60-80% of 0.5% to about 3% of lipophilic microcapsule), 0.05-0.15% of glyceryl ester complex (glyceryl linoleate, glyceryl linolenate, and glyceryl arachidonate) and at least one long-chain saturated fatty acid (1-5% of 0.5% to about 3% of lipophilic microcapsule) selected from the group consisting of palmitic acid, stearic acid etc. (col. 4, lines 17-33). The composition taught by Mausner works out to the following ranges 0.01-0.8 %

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glycerin, 4.6-9.3% of PEG-100 stearate surfactant, 0.3-2.4% of fatty alcohol, 0.05-0.15% glyceryl ester, 0.005-0.15% fatty acid and the co-surfactant total ranges from 0.35-0.15%. This addresses claims 10, 11, and 14.

The reference does not teach a modified starch in the composition.

Muller et al. teaches a composition for skin care comprising glycerin, modified starch (hydroxypropyl di-starch phosphate), and a surfactant (see claims 3, 10 and 20). This addresses claim 2. The reference teaches that the gel composition preferably contains one or more monohydric or polyhydric alcohol such as glycerin and is present in a quantity of about 5 to 25% in weight (col. 8, lines 1-6) thus addressing claims 6 and 7.

The reference does not teach a crystalline gel structurant comprising a surfactant and a co-surfactant in an amount and type exhibiting an enthalpy as measured by Differential Scanning Calorimetry ranging from about 2 to about 15 Joules per gram and a normal force of from about 0.5 to 5 grams as recited in claim 1 and the melting point range of the gel structurant (claim 9).

Franklin et al. teaches a cosmetic composition that is a structured emulsion (see Abstract). The reference teaches that it is desirable to provide a structurant having an enthalpy of gelation that facilitates processing at conveniently accessible temperatures and promotes stability (see Abstract) and the enthalpy can be determined by differential scanning calorimetry (para 0027). Franklin et al. provides examples of the enthalpies of gelation obtained for different structurants in different solvents and in different amounts (p11, example 1), illustrating that different enthalpies are achieved in relation to the

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chemical composition and content of the structurant, as well as in relation to the nature of the solvent used. The reference further teaches that the hardness (in  $\text{N/mm}^2$ , a measure of the force) and penetration depth of the composition can be measured and vary according to the type of structurant and solvent system used (examples 5 and 6). In regards to claim 9 the reference provides examples (tables p 13) of how the gelling temperature varies according to the type of structure/solvent system.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine glycerin, starch as a cosmetic composition. The motivation to do is provided by Muller et al, and Franklin et al. Muller et al. teaches that starch acts as a skin feel improving agent, stability improver, a viscosity regulator, and as a co-emulsifier (see Abstract). Franklin et al. teaches that the amount and type of gelling agent and solvent can be varied to achieve a desired enthalpy of gelation, such as enthalpy that facilitates processing at conveniently accessible temperatures and that promotes stability.

It is noted that "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955); Furthermore, with regards to the force, melting temperature and SkiCon value (claim 8), it is noted that since the combined teachings of Muller et al, Franklin et al, and Mausner et al. render the composition obvious, the property of such a claimed composition will also be rendered obvious by the prior teachings, since the properties, namely the normal force, melting temperature and SkiCon value are inseparable from its

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composition. Therefore, if the prior art teaches the cosmetic composition or renders the cosmetic composition obvious, then the properties are also taught or rendered obvious by the prior art.

The examiner respectfully points out that "Products of identical chemical composition can not have mutually exclusive properties. "A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

The examiner respectfully points out the following from MPEP § 2112.01: "[T]he discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not render the old composition patentably new to the discoverer." Atlas Powder Co. v. Ireco Inc., 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property, which is inherently present in the prior art, does not necessarily make the claim patentable. In re Best, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

### ***Response to Remarks***

Applicants' arguments filed 1/9/2007 regarding the rejections have been fully considered and they are not persuasive. Please see details below.

Applicants' argue that they have achieved compositions with significant glycerin content through formulation with a modified starch in combination with a specified crystalline gel structurant. Muller et al. teaches a composition for skin care comprising

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glycerin and starch (hydroxypropyl di-starch phosphate), and a surfactant. This composition contains a significant amount of glycerin of about 5 to 25% in weight.

Applicants' argue that Muller et al. do not teach a crystalline gel structurant system comprising a surfactant and a co-surfactant. Muller et al. teaches a composition comprising glycerin, modified starch and surfactants. The reference further teaches that nonionic surfactants are preferably used in combination with anionic and amphoteric surfactants even though it does not explicitly teach one as a surfactant and other as a co-surfactant and teach the combination as crystalline gel structurant.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Umamaheswari Ramachandran whose telephone


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number is 571-272-9926. The examiner can normally be reached on M-F 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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